

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: (954) 566-8855

PREPARED BY: John C. Rayson, Esq.

SUBJECT: Litigation Report November 2008

AFFECTED DISTRICT:

ITEM REQUEST: Schedule for Council Meeting

TITLE OF AGENDA ITEM: Litigation Report November 2008

REPORT IN BRIEF:

PREVIOUS ACTIONS:

CONCURRENCES:

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

RECOMMENDATION(S):

Attachment(s):



OFFICE OF THE TOWN ATTORNEY
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TOWN ATTORNEY REPORT

DATE: November 20, 2008
FROM: John C. Rayson
Thomas P. Moss
RE: Litigation Report Update

1. PARK CITY MANAGEMENT CORP. vs. TOWN OF DAVIE AND PARK CITY ESTATES HOMEOWNERS ASSOCIATION: Park City has filed a Motion for Partial Summary Judgment which was granted. The Court found that the Town is responsible for maintenance of the subject median strip. The Town filed an appeal. The parties filed their appeal briefs and are now awaiting a ruling on the appeal.
2. FEINGOLD vs. TOWN OF DAVIE and FPL: Jeff Hochman, Esq. represents the Town in this negligence action. The Complaint alleges that Plaintiff was thrown from a horse by electrical wiring and is claiming bodily injury. The Plaintiff eventually dropped FPL and two unknown Defendants in this litigation. Thereafter, Plaintiff filed an Amended Complaint, Count 2 of which was dismissed by the Court. The Town Attorney spoke with Mr. Hochman who advised that we are awaiting a trial date.
3. TOWN OF DAVIE vs. OSVALDO CIEDI: The Town filed a six count Code Enforcement action against the property owner alleging that he and others had violated the Davie Town Code and Charter. The Special Magistrate found the property owner in violation of provisions of the Town Code and Charter. The property owner has been ordered to come into compliance with the Town Code and Charter by removing the solid waste in a safe manner. Mr. Ciedi has complied with the Order and the case is now in a *status quo* posture. In particular, the Town is close to reaching an agreement with Mr. Ciedi pursuant to which any development of the property would be contingent upon the replacement of any remaining solid waste with approved fill. It should be noted that the dumping has ceased and that, over time, the solid waste at issue has essentially deteriorated into soil, so that the urgency of this matter has significantly lessened. There are

several potential buyers of the property. Any buyer would be bound by the agreement to replace any remaining waste with approved fill.

4. WAL-MART STORES EAST L.P. vs. TOWN OF DAVIE: On January 28, 2008, the Town of Davie has filed its Response to Plaintiff's Objection to Report and Recommendation. The same date Plaintiff filed a Response to Town of Davie's Objection to the Magistrate's Report and Recommendation. In addition, the District Judge Alan Gold has scheduled a hearing on Wal-Mart's Motion to Enforce Settlement on February 15, 2008. In this hearing Judge Gold issued an order adopting report and recommendation in part; remanding to magistrate judge to schedule a status conference on April 11, 2008. In this status conference hearing, Judge Turnoff entered an order to establish a briefing schedule to address the parties' defenses. After the briefings, Magistrate Judge Turnoff issued an order for mediation to be held on June 26, 2008. An Oral Argument shall be held on January 30, 2009.
5. ALSINA vs. GONZALEZ and the TOWN OF DAVIE: This is a code enforcement case that concerns an encroaching patio onto neighbor's property. The Town has imposed \$60,000 in fines due to the continuing violation and the Alsina's refusal to correct or remove the encroaching patio. The Alsina's filed a lawsuit for adverse possession against their neighbor and seeking an emergency injunction to prevent the Town from assessing or collecting any fines until the adverse possession claim against Gonzalez is adjudicated. After a full hearing, the Honorable Barry Goldstein denied Alsina's motion for injunction, stating that the Special Magistrate had authority to impose the fines and the Court could not interfere with the Special Magistrates' findings and rulings. Thus, the Town can continue to assess fines as long as the violation continues. The only action that the Town can not take without Court order is removing the patio. According to Robert Harris, Chief Code Compliance Officer, removal of the patio is not an action that the Town would undertake in any event. As of November 2008, the parties are still in process of litigating and the Town is merely a by-stander to this action.
6. NOVASTAR vs. MELANIE RODRIGUEZ, TOWN OF DAVIE, et al: Mortgage foreclosure case. The Town has a recorded Order Imposing Administrative Fine. The Final Judgment has been entered which recognizes and preserves the Town's lien rights. We have not received notice of a sale date yet. Rodriguez has filed for bankruptcy as a result of this proceeding; the foreclosure sale has been postponed.
7. DEUTSCHE BANK vs. THEODORE COLLIER, TOWN OF DAVIE, et al: This is a mortgage foreclosure case. The Town has a recorded Order Imposing Municipal Code Enforcement Lien and Administrative Fine in the amount of \$22,400. We have responded to the foreclosure complaint by asserting our lien rights as an affirmative defense. A motion for summary judgment was set for July 28, 2008, it was cancelled by Plaintiff.
8. DEUTSCHE BANK vs. TOM HARVEY, TOWN OF DAVIE, et al.: This is a mortgage foreclosure case. The Town has a recorded Order Imposing Municipal

Code Compliance Lien in the amount of \$1,800. The Town Attorney continues to await further action.

9. OAKES FIRE STATION (PINO KAOBA) : Settlement agreement pending. Final punch list agreed upon.
10. FIRST RESOLUTION INVESTMENT CORP. vs. GREG ATKINS AND TOWN OF DAVIE (GARNISHEE): This is a garnishment action in the State of Iowa. The former Town Attorney filed an Answer to the Garnishment on July 12, 2007. The Town Attorney continues to await further action.
11. BAYVIEW LOAN SERVICING, LLC, A DELAWARE LIMITED LIABILITY COMPANY vs. JOHNNY WILLIAMS, et al.: This is a Mortgage Foreclosure action. The Town of Davie has a subordinate code enforcement lien. Final Judgment was entered in favor of the Plaintiff. The Town's lien is subordinate to the mortgage so the Town will recover only if there are surplus funds following the sale of the property.
12. BP LOANS, LLC (50%) AND MEISTER FINANCIAL GROUP, INC. (50%) vs. TOP VIDEO & PRODUCTIONS, USA, INC., a Florida Corporation, et al.: This is a Mortgage Foreclosure action. The Town of Davie's answer and affirmative defenses were filed on March 10, 2008. On May 31, 2008, Plaintiffs' filed a motion for summary judgment of foreclosure, which was granted. Final Judgment was entered in favor of the Plaintiff. The Town's lien is subordinate to the mortgage so the Town will recover only if there are surplus funds following the sale of the property.
13. N & D HOLDING, INC., a Florida Corporation vs. Town of Davie: This is a Declaratory Judgment action challenging the Town's zoning scheme. The Town filed a motion to dismiss, which was granted. N & D then filed an amended complaint. On June 6, 2008, the Town filed its motion to dismiss the amended complaint, which was again granted. N&D appealed, and the parties are now awaiting a ruling by the Court of Appeal.
14. THE TOWN OF DAVIE vs. SOUTHERN WASTE SYSTMEN, LLC., (Diamond III LLC and Broeren Russo Builders of Florida, LLC.): This was an appeal of a code violation. Southern Waste Systems appealed the Town of Davie's Special Magistrate's Final Order rendered on January 31, 2008. The Town thereafter agreed to remand the case to the Special Magistrate to modify the final order. This case is now closed.
15. THE TOWN OF DAVIE vs. SOUTHERN WASTE SYSTEMS, LLC., (Flamingo Village Corp. and American Engineering & Construction, Inc.): This was an appeal of a code violation. On February 29, 2008, Southern Waste Systems appealed the Town of Davie's Special Magistrate's Final Order rendered on

January 31, 2008. The Town prevailed on the appeal and the Final Judgment stands.

16. THE TOWN OF DAVIE vs. SOUTHERN WASTE SYSTEMS, LLC., PAUL BANGE ROOFING, INC.: This is a code violation case. The violators have filed a Motion to Dismiss Code Violation. The case is in continuance and the Town attorney is awaiting further action.
17. U.S. BANK NATIONAL ASSOCIATION vs. RONALD LANDAU, TOWN OF DAVIE, et al.: This is a property mortgage foreclosure action. The Town's answer and affirmative defenses were filed on May, 20, 2008. Final Judgment was entered in favor of the Plaintiff. The Town's lien is subordinate to the mortgage so the Town will recover only if there are surplus funds following the sale of the property.
18. REOWTIE ROY vs. 305 DEVELOPERS, LLC., TOWN OF DAVIE, et al.: This is a property mortgage foreclosure action. The Town's answer and affirmative defenses were filed on May, 20, 2008. Final Judgment was entered in favor of the Plaintiff. The Town's lien is subordinate to the mortgage so the Town will recover only if there are surplus funds following the sale of the property.
19. THE TOWN OF DAVIE vs. CHARLES SCOTT, et al.: This is a code enforcement lien foreclosure action filed by the Town. All relevant parties have failed to file answers and have been defaulted. A Final Judgment of foreclosure has been submitted to the Court and the Town is waiting for a public sale date. Any proceeds from the sale will go to satisfy the Town's lien.
20. THE TOWN OF DAVIE vs. MARK ROCCI, et al.: This is a code enforcement lien foreclosure action filed by the Town. All relevant parties have failed to file answers and have been defaulted. A Final Judgment of foreclosure has been submitted to the Court and the Town is waiting for a public sale date. Any proceeds from the sale will go to satisfy the Town's lien.